Award No. 10416

Docket No. TE-9463

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pacific Electric Railway that:

1. (a) Carrier violated and continues to violate the agreement between the parties when on May 25, 1956 it improperly abolished the position of Assistant Agent at San Bernardino, California and transferred the major portion of the work of the position to employes not covered by the Agreement.

(b) Carrier further violated the agreement, (Article 22), when it failed to allow the claim as presented after default under the time limit provisions.

2. Carrier now be required to:

(a) Restore G. W. Ray, regularly assigned occupant, to the position of Assistant Agent at San Bernardino, Calif.

(b) *Compensate G. W. Ray the equivalent of any difference in* earnings between what he has earned and what he would have earned as Assistant Agent at San Bernardino; in addition, reimburse him for any expenses incurred by reason of having to leave his permanent place of employment and work at other stations.

(c) *Compensate extra Agents J. J. Catchings, J. W. Olson, J. G.* DelMotte, Marino Russell, R. F. Fawley Jr., Wm. Levak, C. G. Thomas, R. H. Harrison, C. L. Johnston, Wm. J. Simpson and any other extra Agents who have been deprived of work under the provisions of the Telegraphers' Agreement for any monetary loss they may have suffered by reason of Claimant Ray being removed from his regularly assigned position of Assistant Agent San Bernardino.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Mr. Ray was assigned as Assistant Agent at San Bernardino, having a seniority date of May 23, 1950. He received the following letter abolishing his position:

3. That progression of any claim is barred by time limitations of the collective agreement (Carrier's Exhibit "K").

4. That the abolishment of position of Assistant Agent was within the purview of the Agreement of 1938 (Carrier's Exhibit "L").

5. That the contention of the Employes is entirely lacking in either merit or agreement support in that no violation of any provision of the collective agreement has been shown.

All data herein submitted have been presented to the duly authorized representatives of the Employes, or are within their knowledge from public record and office case files, and are made a part of the particular questions in dispute.

The Carrier reserves the right, if and when it is furnished with a submission which has been or will be filed ex parte by the Petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the Petitioner in such submission, which cannot be forecast by the Carrier at this time and has not been answered in this, the Carrier's initial submission.

(Exhibits not reproduced)

OPINION OF BOARD: A determination must be made in the initial portion of this decision as to whether proper procedures were followed on the property in the original claim.

The Organization contends that the claim should be sustained by default. Their reason being that the Carrier's highest officer failed to set forth his reasons for the denial of the claim within the time limits prescribed by Article 22 of the Agreement between Carrier and the Organization.

"ARTICLE 22

"TIME LIMITS FOR PRESENTING AND PROGRESSING CLAIMS OR GRIEVANCES

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Company authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances.

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the

representative of the Company shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Company designated for that purpose.

"(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Company, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Company to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to.

"2. With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, and which have not been filed by that date, such claims or grievances must be filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof. With respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed, as the case may be, within 60 days after the effective date of this rule and if not thereafter handled pursuant to paragraphs (b) and (c) of Section 1 of this rule the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Company has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred.

"3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employe held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

"4. This rule recognizes the right of representatives of the Organization, party hereto, to file and prosecute claims and grievances for and on behalf of the employes they represent.

"5. This agreement is not intended to deny the right of the employes to use any other lawful action for the settlement of claims or grievances provided such action is instituted within 9 months of the date of the decision of the highest designated officer of the Company.

"6. This rule shall not apply to requests for leniency."

We cannot accept the position of the Organization in the instant case. The original claim was forwarded by mail to Mr. Moebius, Assistant General Manager by Mr. Floyd Carper, Local Chairman on July 1, 1956. This claim was made in behalf of Mr. Ray.

In the original letter forwarded to Mr. Moebius, a request was made for a conference. This request was ignored, and the matter was referred to Mr. Wilson, General Chairman, who processed the claim to Mr. McIntire, Manager of Personnel, it was in the form of a letter dated September 17, 1956.

Mr. McIntire responded to this claim in a letter to the General Chairman dated October 3, 1956, wherein he stated as follows:

"Our files do not reflect any such claim as ever having been handled by Mr. Moebius. The nearest we have to a claim of this kind appears to have arisen from a claim presented by Local Chairman Floyd Carper on July 1, 1956, in behalf of Mr. George W. Ray, because of discontinuance of position of Assistant Agent at San Bernardino. There is, however, no semblance of comparison between Mr. Carper's claim outlined in your letter of September 17, 1956. Upon this basis, it will be my position that the claim presented in your letter of September 17, 1956, has not been handled in the usual channels, and this office cannot give further consideration unless and until the matter is first handled with Mr. Moebius.

"I call your attention, as a matter of record, to the fact that there are certain time limitations prescribed in Article 22; and, in all probability, Mr. Moebius may see fit to decline further handling of such a claim in event you may elect to present it to him, in view of the time limitations involved."

The text of the foregoing letter by the Manager of Personnel for Carrier sets forth clearly and concisely his reasons for not approving the claim.

The letter stated that there is no resemblance between the initial claim and the one presented to him, and that the claim was not handled in the usual channels. There is no specific requirement in Article 22 setting forth the nature of the language or expressions that one may utilize in denying a claim.

It is argued by the Carrier that the Employes have failed to comply with Section 3, First (i) of the Railway Labor Act as amended. This argument cannot be considered in a casual manner, it must be given serious consideration. If it is sustained, then the instant case is dismissed without considering the merits.

In the instant case, the initial claim involved the following issues:

1. That the Claimant be returned to the position of Assistant Agent.

2. That he and any Employe affected by the normal exercise of seniority be paid any and all wages lost.

3. That the Carrier violated Article 1, 3 (c) and 4 as well as addendum No. 1 of the current Agreement. The foregoing claims were rejected by the Assistant General Manager of Personnel.

An examination of the record reveals that in the processing of this claim, it was amended substantially i.e.; a request was made for expenses incurred by reason of having to leave his permanent place of employment and work as an extra Employe; that the Carrier transferred a major portion of the work of the position to Employes not covered by the Agreement; the allegation with respect to Item No. 2 of the original claim was changed from general allegation to a specific and then back to a general.

The Organization in the instant case elected to pursue its theory of Agreement violations as set forth in its original statement of claim, and in reliance thereon, the Carrier moved to defend or rebut this claim, the Carrier is not burdened to look at matters other than those contained in the original statement of the claim in order to prepare a defense if it has one.

Therefore, the record in this case shows that the claim before the Board, was not handled in the usual manner, as provided in Section 3, First (i) of the Railway Labor Act, as amended.

See Awards 10193 and 5077.

The claim is dismissed.

FINDINGS The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

For the reasons stated in the Opinion, this claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of March, 1962.